IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1262 OF 2005

Kashinath @ Manik Bhalchandra Dixit ...Appellant

vs.

Mahavir Jambukumar Randive & Anr. ...Respondents

Mr.N.P.Shimpi for the Appellant
Mr.K.V.Mandlik for Respondent Nos.1 and 2

CORAM: A.S.OKA, J.
DATED: AUGUST 8, 2006.

P.C.:

1. Heard Advocate for the Appellant. The Appellant is the original Defendant against whom decree of declaration and injunction has been passed by the Appellate Court.

2. It is not in dispute that one Bapurao Naroba Pangal was the owner of the suit property. One Krishnabai Randive was a daughter of the said Bapurao. On 14th May 1943, the said Bapurao inducted one Ganesh Deshpande as a tenant in the suit house. After demise of said Bapurao, there was a partition in which the suit house went to the share of the said Krishnabai. The said Krishnabai executed an agreement for sale in favour of Ganesh Deshpande on 11th December 1943. The present Appellant claims on the basis of the sale deed dated 11th November 1974 executed in his favour by the said Ganesh Deshpande. The Appellate Court has held that the Respondents-Plaintiffs are the owners of the property and are

in possession thereof. The Respondents-Plaintiffs are the legal representatives of deceased Krishnabai. It is held that the sale deed dated 11th November 1974 is not binding on the Respondents.

3. The learned Counsel for the Appellant submitted that in earlier suit to which Ganesh Deshpande was a party, it was held that his possession is protected under section 53-A of the Transfer of Property Act, 1882. He submitted that there is no evidence on record to show that the said Ganesh Deshpande was dispossessed anytime thereafter. He submitted that in absence of any evidence regarding dispossession of the said Ganesh Deshpande, decree for injunction could not have been passed.

4. I have considered the submissions. So far as the issue of title is concerned, it is an admitted position that the Vendor Ganesh Deshpande never obtained sale deed in respect of the property from the original owner Krishnabai and therefore ownership was not transferred in favour of the said Ganesh Deshpande. His possession was protected under section 53-A of Transfer of Property Act, 1882 in earlier suit filed by the said Krishnabai.

5. There is a finding of fact recorded by the Appellate Court that in the year 1969 the house property was in

dilapidated condition and said Ganesh Deshpande abandoned the possession of the same. The Appellate Court has referred to the City Survey record which shows the names of the Respondents as owners. The finding of fact has been recorded that when the measurement of the disputed house was carried out in city survey, the said Ganesh Deshpande was not found there. It is an admitted position that the said Ganesh Deshpande did not pay grampanchyat taxes from the year 1969 onwards and the taxes were paid by the original Plaintiffs. Thus, the finding of fact recorded on the basis of appreciation of oral and documentary evidence on record is that Ganesh Deshpande was not in possession of the suit property after November 1969. Thus, the Appellant cannot claim to be in possession of the suit property as he is claiming through the said Ganesh Deshpande.

6. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.